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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,859	02/12/2002	James S. Simon	217042000520	9873
25226	7590	02/26/2004	EXAMINER	
MORRISON & FOERSTER LLP			SPISICH, MARK	
755 PAGE MILL RD			ART UNIT	
PALO ALTO, CA 94304-1018			PAPER NUMBER	

1744

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/075,859

Applicant(s)

SIMON ET AL.

Examiner

Mark Spisich

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/02</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

Applicant is requested to amend page 1 of the specification by updating the status of the parent application.

Information Disclosure Statement

The "other documents" are not present in the file and thus have not been considered.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1,2,4,7-13,15 and 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,427,281 in view of McElfish et al (USP 5,836,035). The basic limitations of claim 1 of the instant application (the frame affixable to a shower/tub wall and including a bore with a cleaning means therein) are all found in the claims of the noted patent. The only distinction is the use of at least one sponge as the cleaning means.

The patent to McElfish discloses a device for scrubbing/cleaning the human body and which may utilize either a brush (36) OR a sponge (38) (column 3, lines 31-40). It would have been obvious to one of ordinary skill to have substituted a sponge for the bristles of '281 depending on the desired scrubbing effect and that the art generally recognizes that they are interchangeable. Claims 2 and 4 recite relative properties which fail to define over the prior art. The use of natural and synthetic sponges (claims 7-8) would be obvious to one of ordinary skill.

3. Claims 1,2,4 and 6-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,427,281 in view of Walker (USP 4,417,362). The basic limitations of claim 1 of the instant application (the frame affixable to a shower/tub wall and including a bore with a cleaning means therein) are all found in the claims of the noted patent. The only distinction is the use of at least one sponge (or combined with bristles as in claim 14) as the cleaning means. The patent to Walker discloses a device for scrubbing/cleaning the human body and which utilizes at last one sponge (14) and further wherein it teaches the use of both a sponge and a brush (22). It would have been obvious to one of ordinary skill to have modified the device of '281 as taught by Walker to (1) to provide a varied cleaning surface and (2) to provide a cleaning means that retained some cleaning fluid. .See above for claims 2 and 4.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-13,15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gustafson (USP 3,543,747) in view of McElfish et al (USP 5,836,035). The patent to Gustafson discloses a frame (26,28) having a bore therethrough, a cleaning means in the form of a plurality of bristles (27) extending from an inner surface of the frame and into the bore and a plurality of suction cups for securing the frame in place in a shower or bath tub. The suction cups would be capable of securing the frame to a wall as well as a floor so long as there was a substantially flat planar surface. The patent to Gustafson discloses the invention substantially as claimed with the exception of the cleaning means including "at least one sponge". The patent to McElfish teaches that a brush (36) and sponge (38) are generally interchangeable with regard to cleaning the human body in a shower. It would have been obvious to one of ordinary skill to have substituted a sponge for the bristles of Gustafson as such to present a less abrasive cleaning surface. The relative properties of claims 2 and 4 fail to define over the prior art. One of ordinary skill would deem it obvious to use any known cleaning sponge material (claims 4,7 and 8) in any number of shapes (claims 5 and 6) based on user preference and commercial availability. The "ring" and "polygon" frame shapes (claims 9 and 10) are met by Gustafson (see the figures). Gustafson discloses a distinct support element (29) with the suction cups in addition to a modular (claims 12 and 15) frame comprising modular components (26,28). With regard to claim 13, the patent to Gustafson discloses a modular frame

(25) comprising components (26,28) which may be permanently or removably secured to a mat-like base (29) (see column 2, lines 55-63). It would have been obvious to one of ordinary skill to have used any known means for permanently securing the modular components of Gustafson, including the adhesive set forth in claim 13. This could be based on commercial availability, cost, etc. With regard to claim 16, figures 10 and 11 of Gustafson teach the insertion of an "appendage" into the bore of the bath brush assembly.

6. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gustafson (USP 3,543,747) in view of either Walker (USP 4,417,362) OR Carlin et al (USP 5,163,200). AS noted above, the patent to Gustafson discloses the invention substantially as claimed with the exception of the at least one sponge and, with regard to claim 14, bristles in addition to the at least one sponge. The patents to Walker and Carlin are each cited in that they each teach that both a brush and a sponge may be combined for use together for cleaning a part of the human body. It would have been obvious to one of ordinary skill to have provided a sponge to the device of Gustafson either in place of (as it is taught by the art to be a material well suited to cleaning the human body) or in addition to the bristles thereof so as to present a varied cleaning surface (claim 14). The remaining claims are met in the same manner as set forth in paragraph #5.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Spisich
Primary Examiner
Art Unit 1744

MS